IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1331 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALDAS MOTIRAM SHARMA

Versus

VANAND GIRDHARLAL MANGANLAL

Appearance:

1. First Appeal No. 1331 of 1988

MR JD AJMERA for Petitioner No. 1

MR YN RAVANI for Petitioner No. 2

MS PJ DAVAWALA for Petitioner No. 2

MR BJ JADEJA for Respondent No. 1-2

MR AM MEHTA for Respondent No. 1-2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1. This appeal arises from the judgment & award dated 16-3-1988 rendered in M.A.C. Petition No. 92 of 1985.

2. The Union of India, i.e. Appellant No.2 is the owner of vehicle bearing No: 84 P - 4427-Y, and the Appellant No.1 is the driver of the said vehicle. On 28-9-1984 at around 7.00 a.m. the deceased Rajesh Girdharlal Vanand along with his cousin brother Bhupat Ravjibhai were returning from village Soyal to their native village Moti Banugar in a public career. At around 7.30 a.m. both of them, i.e. deceased Rajesh and his cousin brother Bhupat alighted from the public career and crossed the road, i.e. Rajkot-Jamnagar Highway from the southern edge of the road towards north, in order to go to their village Moti Banugar. The case of the claimants is that, after crossing the road, just as the deceased Rajesh reached the edge of the road on the northern side, appellant No.1 came driving Air Force bus bearing No. 84-P 4427-Y from the direction of Rajkot and proceeding towards Jamnagar, and hit the deceased Rajesh. Rajesh sustained serious injuries on head and fell down on the road, and died on the spot due to the injuries the sustained by him. The deceased was aged about 7 years and was studying in 3rd standard in the school at Banugar. A claim was lodged seeking compensation to the tune of Rs.2,10,000/- from the opponents. The opponents resisted the claim petition and ultimately the Claims Tribunal framed the following issues :-

1. Whether the petitioners prove that the deceased died due to the injuries sustained by him due to rash and/or negligent driving of the vehicle involved in the accident ?

2. Whether the petitioners are entitled to claim compensation ? If yes, what amount and from whom?

3. What award ?

And the said issues were answered as follows :-

1. In affirmative.

2. As per below.

3. As per below.

The Claims Tribunal awarded Rs.80,000/- with proportionate cost and interest at the rate of 6 % per annum from the date of application till the date of realisation.

3. Though the ground regarding contributory negligence of the deceased has been raised in the appeal memo, Ms. Davawala, learned advocate appearing on behalf of the appellants, did not seriously contest the findings recorded by the Claims Tribunal, holding the appellant No.1, namely the driver of the offending bus to be solely negligent for the occurrence of the accident. We have gone through the impugned judgment as well as the R & P, with special reference to Panchnama at exhibit-20 and the deposition of the appellant driver at exhibit-26, and do not find any good reason to take any other view in relation to the finding regarding negligence. In our opinion, the Claims Tribunal has correctly held the appellant no.1 driver to be solely negligent for the accident.

4. In relation to the quantum, it was submitted by Ms. Davawala that the Claims Tribunal has awarded excessive compensation under the head of dependency benefit. Assailing findings of the Claims Tribunal, it was contended that, there was no evidence to adopt a datum figure of Rs.1200/- per month as has been done by the Claims Tribunal. In support of this contention, our attention was invited to the deposition at exhibit-16 of the claimant Girdharlal Maganlal, father of the deceased and the deposition of Bhupat Ravjibhai at exhibit-21 to point out that, the claim was an inflated one, and the Tribunal had erred in accepting, what was stated by the said deponents, without there being any evidence in support of what was averred. Ms. Davawala pointed out that, Bhupat Ravji (exhibit-21) has specifically stated that, young boys working in a barber shop would be paid about Rs.10/- to 12/- per day, and in case one has to open one's own shop, capital of Rupees two lakhs would be required. It was further pointed out that, said Bhupat has further deposed that he is not aware of any barber earning Rs.5,000/- per month. As regards the deposition of Girdhlal Maganalal (exhibit-16) it was submitted that the said deponent has stated about his desire to educate the deceased upto graduation, and on the basis of such desire a conjecture has been made that the deceased would be earning Rs.1,500/- per month at the age of 21.

5. Mr. A.M. Mehta, learned advocate appearing on behalf of the original claimants supported the judgment of the Claims Tribunal, and submitted that, the appellants had not made out any case for reduction in the quantum of compensation awarded by the Claims Tribunal. Our attention was invited to provisions of Order-41 Rule-33 of the Civil Procedure Code,1908, to submit that, even in absence of Cross Objections, it was open to the appellate Court to pass an order on an aspect which the lower Court failed to take into consideration or omitted to pass the necessary order. This submission was made in support of the proposition that the rate of interest of 6 % awarded by the Claims tribunal was on the lower side, and the claimants were entitled to the interest atleast at the rate of 12 %. In support of this submission, decision of this Court in case of ORIENTAL FIRE & GENERAL INSURANCE CO. LTD VS. AMARSING PRATAPSING SIKLIKER & ORS, 1993 (1) G.L.R. pg. 270 was relied upon.

6. Having gone through the R & P as well as deposition of the father of the deceased and the cousin brother of the deceased at exhibit-16 and 21 respectively, we find that this appeal requires to be partly allowed by modifying the quantum of compensation awarded by the Claims Tribunal. It is true that, in cases where there is no evidence of income, a figure is to be arrived at on the basis of the estimate which has to be based on the totality of the facts & circumstances of each individual case. The age of the deceased, the social background, the educational qualifications, if any, are some of the factors which will have to be taken into consideration for making an estimate of the income of the deceased for the purpose of computing the compensation, which could be stated to be fair and just in light of the facts & circumstances, which would come on record of a particular case.

7. In the instant case, the deceased was a boy of seven years, stated to be studying in 3rd standard in a village school. Though it is deposed by father of the deceased that the deceased was to be educated upto graduation, and the claimant father desired the deceased to obtain service in a government organization, we do not have any material to show with certainty that the deceased would have graduated and obtained such service. This is in context of the uncertainties in life and also in absence of any evidence as to the educational performance of the deceased. Similarly, considering the deposition of Bhupat Ravjibhai (exhibit-21), it is apparent that in case the deceased had taken up the

vocation of his father he would not have earned more than Rs.700/- to 800/- per month. We have no other evidence on record to fall back upon and assess as to what income the deceased would have earned at a given point of time in his life, in case the unfortunate incident had not taken place.

8. However, taking into consideration the fact that the deceased would have taken up same occupation or vocation, we feel that, it would be fair and reasonable to adopt the datum figure of Rs.600/- per month as the income which the deceased would have earned. Deducting therefrom 50 % towards his personal expenses, bearing in mind that, in future the deceased would have married and raised his own family, the resultant datum figure would be Rs.300/- per month. This would give an annual income of Rs.3600/- and applying the multiplier of 15, one can compute the dependency benefit at a figure of Rs.54,000/. This would be the loss of dependency benefit that the claimants would be entitled to. Thus the figure of Rs.72,000/- awarded by the Claims Tribunal is substituted by the amount of Rs.54,000/- that the claimants would now be entitled to.

9. It was further submitted by Ms. Davawala that the Claims Tribunal has erroneously granted sum of Rs.8,000/- on account of pain, shock and mental agony etc. as the death was instantaneous. We find that the Claims Tribunal has not awarded any amount under the head of loss of expectancy of life. Therefore, accepting the contention in part to the effect that the Claims Tribunal was in error in awarding the amount under the head of pain, shock and suffering etc. we uphold the award of Rs.8,000/-, but under the head of loss of expectancy of life.

10. Therefore, the claimants would be entitled to a sum of Rs.54,000/- + Rs.8000/-, i.e. totally Rs.62,000/- as compensation.

11. Coming to the plea of raising the rate of interest awarded by the Claims Tribunal, we are in complete agreement with the ratio laid down in the case of Oriental Fire & General Insurance Co. Ltd (supra) that an appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross-objections or an appeal. However, on the facts of the present case, we do not find that any case has been made out on behalf of the respondents i.e. the original claimants for enhancing the rate of interest awarded by the Claims Tribunal. In

the aforesaid case, the facts were that the claimant was seriously injured and even after hospitalisation and treatment the claimant therein continued to suffer with serious problems and disability by way of complications which had arisen so far as the pelvis and urethra were concerned, resulting in continuous dripping of urine. It was in such peculiar facts of the case that the Division Bench of this Court exercised the powers under Rule-33 of Order-41 of the Civil Procedure Code to revise the rate of interest in absence of cross objection. In the present case, the claimants are the parents of the deceased boy and as the facts go to show the deceased was only aged seven years when the accident occurred. In light of these facts & circumstances of the case, we do not find this to be a fit case requiring exercise of discretionary powers under Order-41 Rule-33 of Civil Procedure Code, so as to enhance the rate of interest awarded by the Claims Tribunal.

12. The appeal is therefore partly allowed. Instead of the amount of Rs.80,000/- awarded by the Claims Tribunal vide impugned award dated 16-3-1988, the claimants would now be entitled to the sum of Rs.62,000/- with proportionate interest at the rate of 6 % per annum from the date of application till the date of realisation and costs.

13. The appeal accordingly stands partly allowed as aforesaid. No costs.

Dt: 6-3-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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